

Accordingly, 22 CFR is hereby amended by adding a new part 21 as follows:

## **PART 21—INDEMNIFICATION OF EMPLOYEES**

**Authority:** 5 U.S.C. 301; 22 U.S.C. 2658.

### **§ 21.1. Policy.**

(a) The Department of State may indemnify an employee for any verdict, judgment, or other monetary award which is rendered against such employee, provided that the conduct giving rise to the verdict, judgment, or award was taken within the scope of employment and that such indemnification is in the interest of the United States, as determined as a matter of discretion by the Under Secretary for Management or his or her designee.

(b) The Department of State may settle or compromise a personal damages claim against an employee by the payment of available funds at any time, provided the alleged conduct giving rise to the personal damages claim was taken within the scope of employment and that such settlement or compromise is in the interest of the United States, as determined as a matter of discretion by the Under Secretary for Management or his or her designee.

(c) The Director General of the Foreign Service and Director of Personnel ("Director General") shall be the designee of the Under Secretary for Management with respect to determinations under paragraphs (a) and (b) of this section in cases which involve:

(1) Foreign courts or foreign administrative bodies and

(2) Requests of less than five thousand dollars.

(d) Absent exceptional circumstances as determined by the Under Secretary for Management or his or her designee, the Department will not entertain a request either to agree to indemnify or to settle a personal damages claim before entry of an adverse verdict, judgment, or award.

(e) When an employee in the United States becomes aware that an action has been filed against the employee in his or her personal capacity as a result of conduct taken within the scope of his or her employment, the employee shall immediately notify the Department through the Executive Director of the Office of the Legal Adviser that such an action is pending. Employees overseas shall notify their Administrative Counselor who shall then notify the Assistant Legal Adviser for Special Functional Problems. Employees may be authorized to receive legal

representation by the Department of Justice in accordance with 28 CFR 50.15.

(f) The employee may thereafter request indemnification to satisfy a verdict, judgment, or award entered against the employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, award, or settlement proposal if on appeal, to the Legal Adviser. Except as provided in paragraph (g) of this section, the Legal Adviser and the Director General shall then, in coordination with the Bureau of Finance and Management Policy, forward the request with their recommendation to the Under Secretary for Management for decision. The Legal Adviser may seek the views of the Department of Justice, as appropriate, in preparing this recommendation.

(g) Cases in which the Director General is the designee under paragraph (c) of this section may be forwarded by the Assistant Legal Adviser for Special Functional Problems, along with the views of the employee and the bureau or post as appropriate, to the Director General for decision.

(h) Personal services contractors of the Department are considered employees for purposes of the policy set forth in this part.

(i) Any payment under this part either to indemnify a Department of State employee or to settle a personal damages claim shall be contingent upon the availability of appropriated funds.

(j) In addition to the indemnification provisions contained in the regulations in this part, the Department will also follow any specific policies or regulations adopted with respect to damages awarded against Department health care personnel for malpractice claims within the scope of 22 U.S.C. 2702.

Dated: May 5, 1995.

**Richard M. Moose,**

*Under Secretary for Management.*

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## **UNITED STATES INFORMATION AGENCY**

### **22 CFR Part 502**

[Rulemaking No. 202]

### **Educational, Scientific, and Cultural Material; World-Wide Free Flow (Export-Import) of Audio-Visual Materials**

**AGENCY:** United States Information Agency.

**ACTION:** Final rule.

**SUMMARY:** The Agency is adopting a final rule amending existing regulations governing the United States Information Agency's administration of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character, of 1948, by permitting the issuance of serial certifications in certain circumstances. The amendment reinstates into the regulations a provision omitted in a previous revision of the regulations, and allows for certification of time sensitive materials in serial format, thus facilitating the free flow of eligible materials.

**EFFECTIVE DATE:** June 7, 1995.

#### **FOR FURTHER INFORMATION CONTACT:**

Neila Sheahan, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 619-5030.

**SUPPLEMENTARY INFORMATION:** The United States Information Agency implements and administers the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character ("Beirut Agreement"), enacted by the Third General Session of the United Nations Educational, Cultural and Scientific Organization (UNESCO), in Beirut, Lebanon in 1948, 17 U.S.T. 1578. In order to reconcile the terms of the Beirut Agreement with recent judicial decisions and statutory requirements, the Agency published revisions to the regulations covering implementation of the Agreement, at 59 FR 18963 on April 21, 1994. Those regulations made changes in the substantive criteria by which the Agency evaluates the character of audio visual material for certification, and renumbered the regulations. The regulations, however, omitted the provision for serial certifications, a practice followed informally from 1963 and formally incorporated into Agency regulations in 1984, at 22 CFR 502.6(b)(6). The provision for serial certifications was not challenged by judicial decisions; nor was its alteration or elimination required by statute.

On April 18, 1995 the Agency published in 60 FR 19385 a proposed rule to reinstate the provision for serial certification. It allows for the certification of otherwise eligible materials that (1) are produced in series form (e.g. weekly, bi-weekly, monthly), (2) are extremely time sensitive; and therefore the normal processing of

certification decisions thereon would result in unreasonable delays and monetary loss to the producer, and (3) samples are provided and the educational character of the future programs can be generally described before certification and can be verified by a post-certification review of the items or through descriptive material such as a script of the narration. The Agency received one comment on the proposed amendment to the existing regulations, which agreed that the amendment was necessary to facilitate the free flow of eligible information to interested audiences.

### Regulatory Analysis and Notices

In accordance with 5 U.S.C. 605(5), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

No additional burden under the Paperwork Reduction Act, 44 U.S.C. Chapter 35, will result from the promulgation of this rule.

### List of Subjects in 22 CFR Part 502

Audiovisual material, Education, Exports, Imports, Trade Agreement.

For the reasons set out in the preamble, 22 CFR part 502 is amended as follows:

### PART 502—WORLD-WIDE FREE FLOW OF AUDIO-VISUAL MATERIALS

1. The authority citation for part 502 continues to read as follows:

**Authority:** 5 U.S.C. 301, 19 U.S.C. 2051, 22 U.S.C. 1431 *et seq.*; Pub. L. 102-138, E.O. 11311, 31 FR 13413, 3 CFR 1966-1970 comp., page 593.

2. Section 502.2 is amended by adding, in alphabetical order, a definition for "serial certification" to read as follows:

#### § 502.2 Definitions.

\* \* \* \* \*

*Serial certification*—means certification by the Agency of materials produced in series form and which, for time-sensitive reasons, cannot be reviewed prior to production; but samples are provided on application, and the materials are subject to post-certification review.

\* \* \* \* \*

3. Section 502.3 is amended by adding new paragraphs (d) and (e) to read as follows:

#### § 502.3 Certification and authentication criteria.

\* \* \* \* \*

(d) The Agency may certify or authenticate materials which have not been produced at the time of application upon an affirmative determination that:

(1) The materials will be issued serially,

(2) Representative samples of the serial material have been provided at the time of application,

(3) Future titles and release dates have been provided to the Agency at the time of application,

(4) The applicant has affirmed that:

(i) Future released materials in the series will conform to the substantive criteria for certification delineated at paragraphs (a) through (c) of this section;

(ii) Such materials will be similar to the representative samples provided to the Agency on application; and

(iii) The applicant will provide the Agency with copies of the items themselves or descriptive materials for post-certification review.

(e) If the Agency determines through a post-certification review that the materials do not comply with the substantive criteria for certification delineated at paragraphs (a) through (c) of this section, the applicant will no longer be eligible for serial certifications. Ineligibility for serial certifications will not affect an applicant's eligibility for certification of materials reviewed prior to production.

Dated: June 1, 1995.

Les Jin,

General Counsel.

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### NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

#### 36 CFR Part 1236

RIN 3095-AA51

#### Management of Vital Records

**AGENCY:** National Archives and Records Administration.

**ACTION:** Final rule.

**SUMMARY:** This regulation revises NARA regulations on Federal agencies' management of vital records in order to place the vital records program in the context of agency emergency management responsibilities. The vital records program is intended to ensure continuity of agency operations and protect rights of citizens and the Government. The regulation affects all Federal agencies.

**EFFECTIVE DATE:** This rule is effective June 7, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Hadyka or Nancy Allard at 301-713-6730.

**SUPPLEMENTARY INFORMATION:** NARA published a notice of proposed rulemaking on May 31, 1994 (59 FR 28033) for a 60-day comment period. The proposed rule expanded the vital records program to incorporate contingency planning and records disaster mitigation and recovery. Twenty written comments were received. It was clear that the extension of the regulation on vital records to a broader context was perceived by the agencies to be confusing, redundant, and burdensome. Consequently, NARA has revised the regulation to limit its application to vital records responsibilities, in the context of the larger emergency management program. Additional information will be provided in a forthcoming NARA management guide. The guide will provide more detail on vital records program planning, identifying vital records, training agency staff, and assessing records damaged in an emergency or disaster to determine what steps, if any, should be taken to recover the information in them. Its provisions will be advisory, rather than mandatory.

Following is a section-by-section discussion of the major issues raised in the written comments.

#### Section-by-Section Analysis

##### Section 1236.10 Purpose

One agency thought that vital records should be presented as part of the disaster recovery program, rather than the reverse. Another agency recommended that the rule clarify the relationship between contingency planning, vital records, and records disaster mitigation and recovery. This section has been modified to reflect the revised scope of the regulation.

##### Section 1236.12 Authority

NARA reconsidered the authorities cited for this regulation and deleted 44 U.S.C. 3105 because that section of the law relates to unauthorized disposal. It supports the records disposition regulations at 36 CFR 1228 and has no direct relationship to regulations on vital records.

##### Section 1236.14 Definitions

One agency noted that the definition of contingency planning actually described risk analysis. Another agency recommended that the definition of emergency operating records be modified to clearly cover records